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June 29, 2015

VIA ELECTRONIC CASE FILING

The Honorable Leonard D. Wexler
Senior United States District Court Judge
United States District Court
Southern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: Lopez, et al. v. Setauket Car Wash and Detail Center, et al.
Case No.: 12-cv-6324 (LDW) (ARL)

Your Honor:

This firm is counsel to Setauket Car Wash & Detail Center, TLCW, Inc. and Steven Saviano, Defendants in the above-referenced matter. We write in opposition of Plaintiffs' motion for an extension of time to respond to our motion for summary judgment. [ECF Doc. No. 124] For the following reasons, we respectfully request Your Honor deny Plaintiffs' motion in its entirety.

At the May 20, 2015 pre-motion conference, Your Honor set a contemporaneous motion schedule for Plaintiffs' motion for class certification and Defendants' motion for summary judgment. [ECF Doc. No. 117] Pursuant to that schedule: (1) all initial motion papers were served on June 10, 2015; (2) all opposition papers are to be served on July 1, 2015; and (3) all reply papers are to be served on July 10, 2015.

Plaintiffs now, some three (3) business days before their response is due, request a three (3) week extension to serve their response papers based upon an "unforeseen staff shortage," which includes an associate being out of the office for over one week. [ECF Doc. No. 124] However, Plaintiffs have been in possession of Defendants' motion for summary judgment since June 10th. Pursuant to Your Honor's Order, Plaintiffs had from June 10 to July 1, 2015 in which to respond, a total of twenty-one (21) days, yet they request an additional twenty-one (21) days, double the amount of time originally provided by Your Honor, to respond to Defendants' eleven (11) page motion. An extension of any kind, let alone double that of the original amount of time, will prejudice Defendants, as Your Honor's Order already provides adequate time for Plaintiffs to respond to Defendants' motion.



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Although this is Plaintiffs' first request for an extension of time to respond to Defendants' motion, Plaintiffs' dilatory tactics and manifest disregard for Court deadlines evidenced throughout this litigation are a matter of record. Most recently, Defendants were forced to file two (2) motions in connection with Plaintiffs' failure to prosecute this case in a timely manner. First, Defendants filed a motion to strike four (4) Plaintiffs from this litigation because Plaintiffs' counsel failed to comply with this Court's Orders and schedule their depositions. [ECF Doc. 122] Second, Defendants filed a motion to quash the subpoena *ad testificandum* issued to Defendants' accountant after discovery period closed, which is proven by the fact that our summary judgment papers were filed prior to the issuance of said subpoena.

Moreover, jury selection in this matter is scheduled for September 28, 2015. [ECF Doc. No. 117] Not only will Defendants be prejudiced by further delay in this action, but Your Honor's time in which to review Defendants' motion for summary judgment, based upon Plaintiffs' failure to set forth a Federal Claim, will be shortened significantly as well. Accordingly, Defendants respectfully request this Court deny Plaintiffs' motion in its entirety.

Defendants' counsel remains available should Your Honor require additional information relating to this submission.

Respectfully submitted,

ZABELL & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to be 'Saul D. Zabell', is written over the printed name.

Saul D. Zabell

Encl.

cc: Client
Neil M. Frank, Esq.